



The Position of the Village Regulations in the Legal System in Indonesia

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ABSTRACT

One of the principles of the rule of law is that governance must be based on the provisions of laws and regulations, including governance in villages must be implemented based on Village Regulations. Village Regulations are legal products in the village that are stipulated by the Village Head with the approval of the Village Consultative Body (BPD). As a legal product of the village, Village Regulations are used as the basis for organizing village governance. The type of research conducted is normative juridical with a statutory approach and a conceptual approach. The position of village regulations based on the provisions of Article 8 paragraphs (1) and (2) of Law Number 12 of 2011, is one type of statutory regulation, and its existence is recognized. And has binding legal force as long as it is ordered by higher statutory regulations or formed based on authority. The implementation of village governance must be implemented based on Village Regulations and other statutory regulations. Village regulations are formed as the basis for organizing village governance, one of which concerns the Village Revenue and Expenditure Budget (APBDes) which must be stipulated by Village Regulations. Village regulations are formed to be used as the basis for implementing development and implementing activities. others in the village so that Village Regulations exist in the implementation of village governance.

Keywords: Village Regulations, Laws, Legal System

Introduction

In a state of law, every state or government administrator must be based on legal provisions, namely statutory regulations, including in village government must be implemented based on Village Regulations. Village Regulations as a legal product in the village made and stipulated by the Village Head with the approval of the Village Consultative Body (BPD). As a legal product of the village, Village Regulations are used as the basis for implementing activities in the village.

The role of the central government in determining the direction of national development in the last decade can have an impact on the constitutional system of the Republic of Indonesia after the reformation. The centralistic approach of the New Order era ended with a high level of development disparity between regions. At the practical level, granting the broadest possible regional autonomy means granting authority and freedom to regions to manage and utilize regional resources optimally. The focus of regional autonomy is placed at the Regency/City level, but in essence, this independence must start from the lowest level of government, namely the village.¹

Historically, the Village was the forerunner of the formation of political society and government in Indonesia long before this nation was formed. Social structures such as villages, indigenous communities, and so on have become social institutions that have a very important position. The village is an autonomous institution with its traditions, customs, and laws and is relatively independent. This is indicated by the high level of diversity, making the village perhaps the most concrete form of the nation. However, Law Number 23 of 2014 explains that villages in districts/cities can gradually be changed or adjusted to become sub-districts according to the proposal and initiative of the Village Government together with the Village Consultative Body as stipulated in the regional regulation. With the assumption that the community in the area is more characterized by urban communities.²

¹ Thomas, *Pengelolaan Alokasi Dana Desa dalam Upaya Meningkatkan Pembangunan di Desa Sebawang Kecamatan Sesayap Kabupaten Tana Tidung. Jurnal Pemerintahan Integratif*, Vol. 1 No. 1, 2013, h. 51-64

² HAW Widjaja. *Otonomi Desa Merupakan Otonomi yang Asli Bulat dan Utuh*, Raja Grafindo, Jakarta, 2004, h. 4

Law Number 12 of 2011 concerning the Formation of Legislation, explicitly does not regulate village regulations, but previously according to Law Number 10 of 2004, Village Regulations were included in the order of statutory regulations. Although Law Number 12 of 2011 does not explicitly regulate village regulations, it does not mean that Law Number 12 of 2011 does not recognize the existence of village regulations as statutory regulations.

Research methods

This research uses normative legal research. Normative legal research is a scientific research procedure to find the truth based on the logic of legal science from its normative side.³ The type of research is normative legal, so the approach used is the statutory approach, and the conceptual approach. The statutory approach is an approach that uses statutory regulations.⁴ Primary legal materials used include; the 1945 Constitution of the Republic of Indonesia, Law Number 12 of 2011 concerning the Formation of Legislation, Law Number 23 of 2014 concerning Regional Government, Law Number 6 of 2014 concerning Villages.

Results and Discussion

Position of Village Regulations in the Legal System in Indonesia

The Republic of Indonesia is a country based on law as regulated in Article 1, Article (3) of the 1945 Constitution of the Republic of Indonesia. This provision emphasizes that the life of various countries must be based on law, not on the authority of others. So the law that is based on it can finally become an instrument for the authority of others in the Republic of Indonesia as a whole and truly.

Burgens put forward a simple understanding of *rechtstaat*, namely a state that places the law as the basis for state power and the implementation of this power is considered to be carried out in all its forms within the framework of legal power.⁵ Thus, it is also applicable in the life of the village government. Every action of the village

³ Ibrahim. Johnny. *Teori & Metode Penelitian Hukum Normatif*. BanyuMedia Publishing, Malang. 2016. h 57

⁴ Peter Mahmud Marzuki. *Penelitian Hukum*. Prenadamedia Group (Divisi Kencana). Jakarta Timur. Cet ke-14. 2009 h 137

⁵ A. Hamid S. Attamimi, *Teori Perundang-Undangan Indonesia*, pidato, makalah disampaikan pada upacara pengukuhan jabatan Guru Besar Tetap Fakultas Hukum Universitas Indonesia tanggal 25 April 1992 di Jakarta .

government must be based on the existing legislative regulations, the legislative regulations must be in force before the action to create administrative assistance is carried out by the village government.

The 19th Legislation of the 6th Legislation of the Village stated that, the government affairs that are the authority of the village include other things:

- a. authority based on the source of the proposal.
- b. local authority based on the Village.
- c. authority assigned by the Government, the Regional Government, the Provincial Government, or the Regency/City Government.
- d. other authority assigned by the Government, the Regional Government, the Provincial Government, or the Regency/City Government by the provisions of the legislation.

Based on the provisions in the village, the village has the authority to govern. As has been conveyed in the village, to exercise the authority of the village government, a legal instrument is needed that is used as a means of implementing the village government. The legal instruments used are the Village Regulation, the Village Head Regulation, and the Village Head Decree. The Village Regulation (Perdes) is a further elaboration of the higher legislative regulations by considering the social and cultural conditions of the local village community. Thus, the ideal design regulation may conflict with the public interest and/or the higher negotiation regulation.

Article 7 of Law Number 12 of 2011 regulates the types and hierarchy of negotiation regulation in Indonesia, which consists of:

- a. The Constitution of the Republic of Indonesia in 1945.
- b. The Council of the Consultative Assembly of the People's Consultative Assembly.
- c. The Constitution/Regional Government of the Successor to the Constitution.
- d. The Constitution of the Government.
- e. The Constitution of the President.
- f. The Constitution of the Province; d. The Constitution of the Regency/City

In addition, Article 8 Paragraph (1) of Law Number 12 of 2011 states that:

“Types of deliberations, other than those referred to in Article 7 paragraph (1), include deliberations established by the Regional Consultative Assembly, Regional Representative Council, Regional Representative Council, Regional Chief Justice, Constitutional Council, Financial Auditing Council, Judicial Commission, Indonesian Parliament, Ministers, institutions, or related commissions established by the Deliberations, Regional Representative Councils at the provincial level, Regional

Representative Councils at the district/city level, Regent/Mayor, Village Chief, or related commissions.”.

Both of these provisions are not clearly stated in the Village Head's position, however, Article 8 of the Law (1) contains several types of legislative provisions in the form of provisions that are determined by the Village Head or related parties. So it can be related that Law Number 12 of 2011 accommodates the diversity of Village Heads, but regulates further regarding their other positions.

The fact is that this regulation is different from the regulation in previous regulations, namely Law Number 10 of 2004 on the Formation of Legislation, Article 7, Articles (1), (2), and (3) which stated that:

- (1) The types and hierarchy of statutory regulations are as follows:
 - a. The Decree of the Republic of Indonesia in 1945;
 - b. The Decree/Government Regulations of the Replacement Government Regulations;
 - c. The Decree of the Government;
 - d. The Decree of the President;
 - e. The Decree of the President.
- (2) The Regional Regulations as referred to in paragraph (1) letter e include:
 - a. Provincial Regional Regulations are made by the provincial people's representative council together with the governor;
 - b. District/city Regional Regulations are made by the district/city regional people's representative council together with the mayor;
 - c. Village Regulations/similar regulations, made by the village representative body together with the village head or his/her other name;
- (3) Further provisions regarding the procedures for making Village Regulations/regulations at the same level as the relevant district/city Regional Regulations..”

In the regulation of Law Number 10 of 2004 on the Formation of Legislation, it clearly states that the position of village regulations is included in regional regulations, below district/city regulations. Seeing such regulation, it is certain that with the enactment of Law Number 12 of 2011, village regulations are no longer included in the hierarchy of legislation and will remain in existence as legislation based on Article 8 of Law Number 12 of 2011 on the Formation of Legislation.

The provisions of Article 7 Paragraph (1) of Law Number 12 of 2011 are the name of vertical norms, meaning the name is hierarchical from top to bottom or from bottom to top. So that the legal norms below are based on the legal norms above them. According to Bagir Manan, legislation is as follows:⁶

- a. every written decision issued by an official or authorized office environment that contains general rules of conduct;
- b. it's a rule of conduct that contains provisions concerning rights, obligations, functions, status or a prisoner;
- c. it's a regulation that has general abstract or general abstract characteristics, meaning it does not regulate or is not aimed at certain objects, events or concrete symptoms
- d. taking the understanding from Dutch literature, the legislation which is usually called *wet in materiele zin*, atau sering juga disebut dengan *algemeen verbindende voorschrift* yang meliputi antara lain: *de supra-nationale algemeen verbindende voorschriften*, *wet*, *AMvB*, *de Ministeriele verordening*, *de gemeentelijke raadsverordeningen*, *de provinciale statenverordeningen*.

Article 8 paragraph (2) of Law Number 12 of 2011 states that the laws and regulations as referred to in paragraph (1) have permanent and binding legal force as long as they are ordered by higher laws and regulations or are formed based on authority. By the provisions of the article and the definition of laws and regulations according to Bagir Manan, village regulations are also related to authority. Philipus M. Hadjon stated that there are three sources of authority, namely attribution, delegation, and mandate.⁷

Delegation authority is the authority that is given or determined for a particular position. The concept of delegated authority is the authority of delegation. While the mandate contains the meaning of assignment, not delegation of authority. So theoretically village regulations can be formed through delegation or mandate from a higher government, namely in the sense: of government affairs that are the authority of the district/city whose regulation is delegated to the village or assistance tasks from the Government, provincial government, and/or district/city government.

⁶ Bagir Manan, dalam Maria Farida, *Ilmu Perundang-undangan (1) : Jenis, Fungsi, Materi Muatan*, Kanisius, Yogyakarta, 2007, h.11

⁷ Philipus M. Hadjon, *Hukum Administrasi dan Good Governance*, Ujversitas Trisaakti, Jakarta, 2010, h.. 20-21.

The position of Village Regulations is actually an elaboration of higher regulations or can be formed as long as it is ordered by higher laws and regulations, or can also be formed based on authority. As can be seen through the relationship between Article 19 of Law Number 6 of 2014 and Article 8 of Law Number 12 of 2011, Through Law Number 12 of 2011, the regulation eliminates village regulations from the hierarchy of laws and regulations in Indonesia, the position of village regulations has finally shifted only as a further elaboration of higher laws and regulations in the case of district/city regulations to carry out the implementation and function of government, not as the implementation of village autonomy.

The position of village regulations since the enactment of Law Number 12 of 2011 certainly depends on democracy in the village. Democracy in the village also depends on the regulation in the form of a village regulation law. To find out more about the position of village regulations caused by Law Number 12 of 2011 regarding democracy in the village, we must also know more about the extent of the village regulations.

The position of village regulations in terms of the provisions of article d above certainly has an impact on democracy in the village, considering that village regulations are essentially an instrument for organizing power in the village. To find out more about the position, we must first understand the function and extent of village regulations.

The position of village regulations in the Indonesian legal system needs to be explained beforehand that village regulations are one of the 3 (three) types of village regulations. Based on Article 69 Paragraph (1) of Law Number 6 of 2014 concerning Villages, it is stated that the types of village regulations consist of village regulations, joint regulations of the Village Head, and regulations of the Village Head.

From the perspective of formal law, village regulations are not part of regional legal products. In the Regulation of the Minister of Home Affairs Number 1 of 2014 concerning the Formation of Regional Legal Products, regional legal products in the form of regulations include regional regulations or other names, regional head regulations (perkada), joint regulations of regional heads, DPRD regulations, and various decisions include regional head decisions, DPRD decisions, DPRD leadership decisions and decisions of the head of the DPRD honorary body. Consequently, the formation of village regulations does not refer to the Regulation of the Minister of Home Affairs Number 1 of 2014. This is in line with Law Number 12 of 2011 concerning the Formation of Legislation where Village Regulations are not included in regional legal products.

Law Number 12 of 2011 does not explicitly explain Village Regulations as a type of statutory regulation. However, its position remains included in statutory regulations, based on the provisions of Article 8 paragraph (1) of Law Number 12 of 2011. Types of statutory regulations other than those referred to in Article 7 paragraph (1) include statutory regulations stipulated by the People's Consultative Assembly, People's Representative Council, Regional Representative Council, Supreme Court, Constitutional Court, Audit Board, Judicial Commission, Bank Indonesia, Ministers, institutions, agencies, or commissions of the same level established by Law or the Government based on Law, Provincial People's Representative Council, Governor, Regency/City People's Representative Council, Regent/Mayor, Village Head or equivalent.

The existence of village regulations is valid and has legal force as long as it is ordered by higher regulations or formed based on authority (formal), this is emphasized in Article 8 paragraph (2) of Law Number 12 of 2011. This shows that the position of village regulations is a legal product. Thus, Village Regulations must not conflict with higher regulations. In this case, in compiling village regulations, attention must be paid to the types and hierarchy of statutory regulations as stated in Article 7 of Law Number 12 of 2011 concerning the Formation of Statutory Regulations:

- a. Constitution of the Republic of Indonesia in 1945;
- b. Decree of the People's Consultative Assembly;
- c. Law/Perppu;
- d. Government Regulation;
- e. Presidential Regulation;
- f. Provincial Regulation; and
- g. Regency/City Regulation.

In this case, if the village regulation conflicts with higher laws and public interests, the district/city government can cancel the village regulation based on Article 115 letter e of Law Number 6 of 2014 concerning Villages which states that one of the development and supervision carried out by the District/City Government is to evaluate and supervise village regulations and the explanation of Article 115 letter e of Law Number 6 of 2014 states that what is meant by "supervision" includes the cancellation of Village Regulations.

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